

AUSTIN HOUSING FINANCE CORPORATION
ACQUISITION & DEVELOPMENT (A&D) – HOMEOWNERSHIP PROGRAM
Program Guidelines for General Obligation (GO) Bond Funding,
HOME Funds, CDBG, Housing Trust Fund

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Attachments:

- 1. Current MFI Chart**
- 2. Opportunity Map of Austin**

I. PURPOSE

The purpose of the Acquisition & Development (A&D) Homeownership Program (the Program) is to address the need for affordably priced homes in the City of Austin to be owned and occupied by a low- to moderate-income household.

An affordably-priced home is defined as a completed home that can be purchased by a qualified income-eligible household having the ability to qualify for a first lien mortgage from a recognized mortgage lender. An income-eligible household is defined as having a total household income below 80% of the Median Family Income as determined by HUD.

Subject to the requirements and limitations of General Obligation Bond (GO Bond) issuance authorized by voters in November 2006, the Program is expected to provide financing to for-profit and non-profit developers, including Community Housing Development Organizations (CHDOs) for the acquisition, rehabilitation, and new construction for affordable homeownership projects that would otherwise be financially infeasible.

Through the Program, developers are provided increased financial capacity to meet necessary project development costs. For the purpose of these Program Guidelines, yearly household income limits are in accordance with those established by the U.S. Department of Housing and Urban Development (HUD) for the Austin-San Marcos Metropolitan Statistical Area (MSA).

II. FUNDING

The Program is administered on behalf of the City of Austin by the Austin Housing Finance Corporation (AHFC) using a variety of funding sources: HOME, CDBG, General Fund, Program Income, Housing Trust Funds, and the proceeds of General Obligation Bonds authorized by the voters in November 2006 to fund affordable housing programs. In the event of a conflict between competing fund source requirements and regulations in a multi-source funded project, the more restrictive requirements will apply.

These Acquisition and Development Program Guidelines are not intended to address every circumstance that may be encountered in the development process, nor are they intended to be a verbatim restatement of all regulatory requirements. Omission of any federal or local regulatory requirements in these Acquisition and Development Program Guidelines does not relieve the City of Austin, the Austin Housing Finance Corporation, or the recipient of Acquisition and Development Program funds from their respective obligations as may be required by the funding source involved.

III. HOUSING CONTINUUM – HOMEOWNERSHIP

The Continuum of Housing Services was locally developed by the City of Austin to organize and describe the varying levels of housing needs. The Continuum serves as a local framework for public and private sector investment to coordinate housing programs and services through the community and to assist income eligible residents in improving their housing needs and opportunities. The Continuum extends across eight locally designated affordable housing categories: Homeless Shelters, Emergency Shelters, Transitional Housing, Public Housing, Assisted Housing, Rental Housing, First-time Homebuyer, and Owner-occupied Housing.

The Program will serve the needs of the First-time Homebuyer category by increasing the supply of ownership housing for low- to moderate-income households. The Program may approve and provide its services as described through the local Continuum description, but will ensure applicable classification and reporting requirements are used when necessary to report to the federal government or other applicable fund sources.

IV. DEFINITIONS

The following definitions are utilized throughout the Program guidelines:

- **“Accessible”** means an individual dwelling unit, facility or a portion of a facility, when designed and constructed, can be approached, entered and/or used by individuals with physical disabilities.
- **“Adaptable”** means certain elements of a dwelling unit or facility can be added to, raised, lowered or altered to accommodate the needs of individuals with disabilities, or to accommodate the needs of persons with different types or degrees of disability.
- **“Continuum of Housing Services”** means the locally determined classification of housing needs and services.

- **“Eligible Costs”** means project costs that can be paid with Program funds. Eligible costs are limited to the costs or partial costs of acquisition and/or verifiable hard construction costs, reasonable construction related fees, and predevelopment costs such as architectural and engineering fees, surveys, market studies and legal fees.
- **“Geographic Dispersion”** means locations or areas that provide the greatest opportunity for families in terms of education, economic, mobility & transportation, health & environment, and neighborhood quality as described in Geography of Opportunity: Austin Region (Kirwan Institute for the Study of Race and Ethnicity, Ohio State University, 2007).
- **“Low- to Moderate-Income Household”** means a household whose gross income does not exceed 80% of the median family income (MFI) according to household size as defined by Community Development Block Grant (CDBG) regulations.
- **“Median Family Income (MFI)”** means the gross family income of households according to household size and locality as established by HUD.
- **“NOFA”** means Notice of Funding Availability. A NOFA is posted to inform the public that funding for the Program is available and that proposals involving the use of the funds will be accepted.
- **“Non-profit Organization”** means a not-for-profit, non-sectarian organization which is certified by the Internal Revenue Service (IRS) as a 501(c)3 entity established for the purpose of benefiting low- and moderate-income individuals.
- **“The Program”** means the Acquisition and Development (A&D) Homeownership Program administered by AHFC on behalf of the City of Austin.

V. NON-PROFIT HOUSING ORGANIZATIONS

A **Non-profit Organization** eligible to receive GO Bond assistance is a not-for-profit, non-sectarian organization which is certified by the Internal Revenue Service (IRS) as a 501(c)(3) entity established for the purpose of benefiting low- and moderate-income individuals.

A **Community Housing Development Organization (CHDO)** is a special type of private nonprofit, community-based service organization that has obtained or intends to obtain staff with the capacity to develop affordable housing for the community it serves. In order to become a certified CHDO, HUD requires that the organization meet certain requirements pertaining to its legal status, organizational structure, relationship to other entities, capacity and experience level. See **CHDO Certification Guidelines**.

VI. ELIGIBILITY

The Program reserves the right to determine project eligibility and fund source use for any proposed project. Determinations will be based on how the Program can best maximize and leverage available funds, create the greatest number of affordable units, meet applicable federal and/or local requirements as well as what is in the best interest of the City/AHFC. The Program is under no obligation to consider or fund any proposed project that does not meet program requirements and assist in meeting the City’s affordable housing policy goals and/or objectives.

A. Organization in Good Standing

An eligible organization must be in good standing to ensure that the City of Austin and the AHFC receives just compensation and compliance for services provided for funds expended. An organization in good standing is a for-profit or non-profit organization under one or more contracts or agreements with the City or AHFC which has in the past met or currently is in compliance with meeting minimum contractual and performance requirements. An organization must be considered in good standing as a condition for consideration for future or additional funding or to amend existing contractual conditions. To be considered in good standing, an organization must meet the following conditions on all City/AHFC contracts:

1. Not being in contractual default or currently owe funds to the City/AHFC because of disallowed or ineligible costs associated with past or current contracts or agreements, and
2. Be within 30 days current of all contractual performance measures and schedules, and
3. Be within 30 days current of all required program and financial reporting, and
4. Not have any outstanding or unresolved audit or monitoring findings from past contracts or agreements, and
5. Be compliant within 30 days in responding to or resolving any current monitoring findings, and
6. Meet all good standing organization conditions prior to execution of any current or future contracts or amendments.

B. Temporary Good Standing Designation.

Because of extenuating circumstances, a non-performing organization (not in good standing) may request consideration from the AHFC to provide a temporary good standing designation in order to allow the organization to receive further funding considerations or amend existing contract conditions. At its sole discretion, the AHFC may consider a temporary good standing designation for the organization to provide time until the compliance issues have been adequately and timely resolved by the organization. The AHFC may consider providing this temporary designation, if the non-performing organization provides documentation of the following:

1. Demonstrate the outstanding compliance issues are beyond reasonable expectations for immediate resolution, and
2. Demonstrate the lack of needed funding or contractual actions would be significantly detrimental to the organization, and
3. Provide an acceptable date specific action plan that delineates organization activities designed to resolve all outstanding documented performance, financial or monitoring compliance issues.

Should the non-performing organization provide sufficient just cause as identified above, the AHFC may provide a temporary good standing designation. The AHFC, at its discretion, may withdraw the temporary designation if the organization fails to perform in accordance with the terms and/or timeframes agreed upon. A non-performing organization designation will eliminate the organization from any current or future consideration for funding or contract extensions. The AHFC is under no obligation to provide or extend temporary organization in good standing designations in which the contractor has consistently demonstrated its lack of adequate responsiveness to the outstanding compliance issues.

B. Eligible Projects

Eligible projects may include acquisition, rehabilitation or new construction of affordable homeownership. For rehabilitation projects, funds may be used to make essential repairs or improvements to meet local code or federal housing quality standards (HQS), come into compliance with federal requirements of Section 504 or the Americans with Disabilities Act, abatement of lead based paint, abatement of asbestos, essential energy-related repairs or improvements, and repair or replacement of major housing systems in danger of failure. Projects assisted must be operated and maintained on a long-term basis in accordance with these program guidelines and contractual requirements relative to applicable federal and local regulations.

Preferences will be given to projects as follows:

1. Projects that address "Geographic Dispersion" as defined above in these Guidelines.
2. Projects that meet the requirements of the City's Vertical Mixed Use (VMU) Ordinance, or are located in a Planned Unit Development (PUD) or a Transit-Oriented Development (TOD).

PLEASE NOTE: AHFC Reserves the right to fund projects at a lower amount than requested, and the right to deny applications that do not coincide with the City of Austin's current year Action Plan goals and policy direction from the Austin City Council.

C. Eligible Costs

Through the Program, applicants may receive project-based financing for acquisition, rehabilitation or new construction of homeownership housing projects. GO Bond proceeds may be used to pay for costs incurred subsequent to the contract date, including:

1. **Hard Costs** such as purchase of homeownership units, acquisition of land for a specific project and acquisition of existing structures, site preparations or improvement including demolition, securing buildings, construction materials and labor and assistance to homebuyers for the payment of the costs specified above.
2. **Soft Costs** such as architectural and engineering fees (including specification and job progress inspections), financing costs, credit reports, title insurance, recording costs, transaction taxes, appraisals, environmental reviews, builders' or developers' fees, marketing costs, and management fees.

The applicant must provide an accounting of expenditures made with funds, a source of which is GO bond proceeds, on such periodic basis as shall be determined by the AHFC or the City of Austin to ensure that the expenditures are made in satisfaction of the public purposes approved by the voters at the November 2006 election.

D. Ineligible Costs

GO Bond funding may not be used for the repair or construction of: wet bars; barbecue pits; bathhouses; burglar bars; carpeting for kitchen, bathrooms, or patios; window treatments (e.g. draperies, shades, curtains, mini blinds); driveways and parking lots (except repairs to existing); dumbwaiters; fireplaces (except repairs to existing); flower boxes; garage door openers; greenhouses; hot tubs or Jacuzzis; mobile homes; outdoor fireplaces or hearths; patios or decks (except repairs of existing); photo murals; swimming pools or swimming pool decks; television antennae; tennis courts; and permanently affixed kitchen appliances (ranges and refrigerator which are designed and manufactured to be freestanding are acceptable uses of funds). AHFC reserves the right to disallow other project costs deemed nonessential to furthering the purpose of the project.

VII. LIMITS OF ASSISTANCE

A. Acquisition

Assistance for acquisition of land or property may not exceed \$1,000,000 for a for-profit developer, or \$2,000,000 for a non-profit developer or CHDO, or such amounts as the AHFC Board may authorize, and must include existing units or will facilitate the new construction of units. Total project costs include the cost of land and improvements. Assistance can be provided for the acquisition of land or existing housing units, only if the acquisition price is equal to or less than the fair market value of the property.

The applicant must demonstrate the fair market value of the property by supplying one of the following:

1. a pre-construction appraisal on the property to be acquired, conducted less than four (4) months prior to receipt by AHFC;
2. an appraisal for two (2) comparable properties within the same neighborhood, or
3. a tax assessment (less than one year old) for the property or for two (2) comparable properties within the same neighborhood

B. Fast-Track Acquisition for Non-Profit Organizations and CHDO Developers

As funding is available, non-profit organizations and CHDOs may submit an application accompanied with an Earnest Money or Purchase/Sales Contract for the acquisition of land and property. The maximum amount per project application(s) is \$100,000. This process is not subject to the competitive NOFA process; however, all applications must meet threshold criteria, project feasibility and evaluation, and project underwriting review by staff.

C. Rehabilitation

A&D rehabilitation assistance for hard construction costs is limited to the following average per unit limits; or \$1,000,000 per project for for-profit developers and up to \$2,000,000 per project for non-profit and CHDO developers, or such amounts as the AHFC Board may authorize:

- \$35,000 per 1 bedroom unit;
- \$40,000 per 2 bedroom unit;
- \$45,000 per 3 bedroom unit or larger.

For rehabilitation projects, funds may be used to make essential repairs or improvements to meet local code or federal housing quality standards (HQS), come into compliance with federal requirements of Section 504 of the Rehabilitation Act of 1974, as amended, or the Americans with Disabilities Act, appropriate treatment or abatement of lead based paint, appropriate handling of asbestos, energy-related repairs or improvements, and repair or replacement of major housing systems.

D. New Construction

1. For-Profit Developers: Assistance for new construction projects is limited to an average of \$40,000 per unit in multi-unit structures, and/or an average of \$60,000 per single-family structure in a single project up to a maximum investment of \$1,000,000, or such amounts as the AHFC Board may authorize.

2. Non-Profit Developers and CHDOs: Assistance for new construction projects is limited to an average of \$60,000 per unit in multi-unit structures, and/or an average of \$80,000 per unit in single-family structures in a single project up to a maximum investment of \$2,000,000 or such amounts as the AHFC Board may authorize.

E. Developer Fees

Developers', builders' or project management fees may not exceed 15% of the total project cost. AHFC will determine the amount of a reasonable development, builder, or project management fee in an amount not to exceed 15% of total project costs.

F. Assisted Units

When GO Bond proceeds are used to assist homeownership projects, certain income and sales restrictions apply to the GO Bond-assisted units for a defined term called the "affordability period." Projects may have a mix of GO Bond-assisted and non-assisted units. The distinction between assisted and non-assisted units allows funds to be expended on mixed-income projects while targeting assistance to income-eligible households. At least 10 percent of all units in the project must be designated as GO Bond-assisted units. Beyond this minimum, the number of assisted units is determined based on a proportional share of total project costs to be paid with GO Bond proceeds. The applicant must designate in its project application for a GO Bond homeownership project the minimum number or "floor" of GO Bond-assisted units reserved for income-eligible households at required income levels, and must agree to an accounting of expenditures made with GO Bond proceeds on such periodic basis as shall be determined by the AHFC or the City of Austin.

VIII. AFFORDABILITY REQUIREMENTS

A. Affordability Period

An Affordability Period will be established for all affordable units in homeownership projects assisted with GO Bond proceeds. The **preferred** affordability period will be for a period of not less than 99 years, using a shared equity or Community Land Trust model of homeownership. Affordability requirements and restrictions remain in force regardless of transfer of ownership. Another acceptable mechanism is a "Right of First Refusal" using the "Resale method" whereby the home must be sold to another low- to moderate-income buyer.

AHFC will control the resale of the homebuyer property during the affordability period either by using *resale* provisions or by using *recapture* provisions, depending on the type of assistance provided:

1. Resale Provisions. This option ensures that the GO Bond-assisted unit remains affordable over the entire affordability period. If the new homeowner wants to sell the home during the affordability period, the sale must meet the following criteria:
 - a. The new purchaser must earn 80 percent of the area Median Family Income or less; and
 - b. Must occupy the property as the family's principal residence.
 - c. The sales price must be "affordable" to the new purchaser. That is, the principal, interest, taxes and insurance to be paid by the prospective homebuyer must be no more than 30 percent of their annual gross household income.

Both development subsidies and direct grants to homebuyers trigger applicability of the resale requirements.

2. Recapture Provisions. The recapture process is a mechanism to recapture all or a portion of the direct subsidy if the recipient decides to sell the house within the affordability period at whatever price the market will bear.

B. Income and Occupancy Requirements

GO Bond-assisted homeownership units must be sold to households earning 80% MFI or below. HOWEVER, AHFC SHALL SET THE FOLLOWING GOALS:

1. A minimum of 60% of all of the GO Bond-assisted units in a given year must be sold to households earning 30% MFI or below.
2. A maximum of 40% of all of the GO Bond-assisted units assisted in a given year must be sold to families earning between 50 – 65% MFI or below.

C. Restrictive Covenant.

AHFC will enforce the affordability period and buyer income requirements by placing on the property a Restrictive Covenant Running with the Land. Closing documents for the sale of a homeownership unit assisted with GO Bond proceeds shall be submitted to AHFC prior to closing to ensure compliance with the Restrictive Covenant.

D. Income Determination Method and Timing

The Applicant shall determine income eligibility using the “Part 5” annual gross income method of income determination (24 CFR 5.609), as outlined in the publication, ***Technical Guide to Determining Income and Allowances for the HOME Program***, available from AHFC. AHFC must review applicable source documentation to verify annual income. Income qualifications must be completed in accordance with the timeframes outlined above, and need not be reexamined at the time the assistance is actually provided.

The low-income household shall be income eligible according to the following timing:

1. In the case of a contract to purchase existing housing, at the time the purchase contract is signed
2. In the case of a contract to purchase housing to be constructed, at the time the purchase contract is signed, and
3. In the case of a lease-purchase agreement (for existing housing or housing to be constructed), at the time the lease-purchase agreement is signed.

IX. OWNERSHIP REQUIREMENTS

A. Types of Ownership.

The program requires ownership of the property using one of the approved forms of ownership described below. Families and individuals own the property if they:

1. Have fee simple title to the property, or
2. Maintain a 99-year leasehold interest in the property, or
3. Own a condominium, or
4. Own or have a membership in a cooperative or mutual housing project that constitutes homeownership under Texas law, or
5. Maintain an equivalent form of ownership approved by the AHFC.

B. Principal Residence.

Purchasers of GO Bond-assisted affordable housing must occupy the properties as their principal residence for the applicable term of the affordability period. This requirement will be reflected in a restrictive covenant running with the land and/or in loan documents between the purchaser and the AHFC. The AHFC and/or the City of Austin may take such additional measures deemed necessary to ensure and/or enforce compliance with this requirement.

X. PROJECT FEASIBILITY

A. Application Underwriting

Projects considered eligible for assistance must meet the following underwriting criteria:

1. It must be demonstrated that the project is not “economically feasible” without Program assistance.
2. Applicant must provide evidence of financial ability to implement and complete the project.
3. Applicant must have the organizational capacity to implement and complete the project.

B. Threshold Requirements for all GO Bond-Assisted Projects

1. The project must be owned, developed or sponsored by a for-profit or non-profit organization in good standing with the AHFC.
2. The project must be located within the city limits of the City of Austin.
3. Projects may consist of as few as one (1) dwelling unit.
4. Units must be used for residential purposes only.

5. Contracts or Loan Agreements of \$200,000 or more and that are assisted with GO Bond proceeds must comply with HUD Section 3 Requirements throughout the development of the project.
6. If applicable, properties must pass the HUD Environmental Review and other environmental reviews.
7. Rehabilitation projects must have a minimum of one (1) condition that violates either the City of Austin's Land Development Code or federal Section 8 Housing Quality Standards (HQS).

XI. FINANCING

The program staff will review and underwrite applications and make recommendations as to eligibility, funding, terms and conditions. The amount of assistance will be determined on a case-by-case basis. Under no circumstances shall financial assistance be used for any reason or cost other than for direct costs associated with and approved by the program. Construction activities shall be governed by the specifications based on approved plans.

A. Timing Requirements

Acquisition of vacant land can be financed with GO Bond proceeds, only if construction will begin on the project within 12 months of purchase. Demolition of an existing structure may be funded through GO Bonds, only if construction will begin on the project within 12 months following demolition.

B. Lien

A lien will be placed on the property for which a loan has been made. The lien shall remain in place until all loan terms and conditions have been fulfilled. A Release of Lien will be issued upon full repayment of the loan and fulfillment of all contractual terms.

C. Loan-to-Value Ratio

AHFC loan amounts will not exceed 80 percent of the after-built home value.

D. Deferred Payment Loans and Forgivable Deferred Payment Loans (DPLs)

Deferred payment loans and forgivable deferred payment loans (DPLs) are available to applicants. A DPL can be made forgivable if it is demonstrated that the project serves lower income levels or provides longer affordability periods than the minimum threshold. Subject to GO Bond restrictions, Deferred Payment Loans are provided at interest rates ranging from zero percent (0%) to the current prime lending rate in effect at the time the loan is made, plus allowable fees. Upon compliance with the terms and conditions of the loan agreement and deed restrictions for the required period of time, the usage of the property may change, but the Note will remain in place until the sale, refinance, or other disposition of the property, at which time the principal, interest and fees will be due and payable.

E. Collateral

Any assistance provided will be secured by a Deed of Trust or other acceptable collateral. The AHFC Deed of Trust may be subordinated to private or other financing only if determined necessary for project implementation. Assistance generally will be non-recourse with recovery rights limited to the encumbered collateral and any income there from.

F. Renegotiation of Loan Terms

At its sole discretion, the AHFC may consider renegotiation of loan terms and conditions if by doing so increases the creation of the number of affordable rental housing units, and/or achieves a more favorable interest rate on any superior loan. Under no circumstances will the Program consider a request to renegotiate loan terms and conditions, if to do so takes equity from the project that will not be used directly in the project itself or places the Program in a lesser lien position without resulting in a reasonable and direct affordable housing benefit. The Program is under no obligation to consider any request to renegotiate any existing loan terms and conditions. It is the intent of the Program that all approved terms and conditions will be honored and met by the project and its owners. It is the policy of the Program that only under certain limited circumstances or situations will any such request be considered. At its sole discretion, the Program may consider renegotiation of loan terms and conditions if by doing so increases the creation of the number of affordable housing units.

XII. APPLICATION and REVIEW PROCESS

All requests for funding shall be submitted in the form of the GO Bond Project Proposal Application (**Attachment 1**). The Program will notify the Applicant in writing of a decision to approve or disapprove of any application. Unless provided in writing by the Program, no person or organization shall construe any discussions held with Program staff or written information provided to constitute an acceptable application or an obligation or commitment for funding.

A. AHFC Staff Review

Applications are given an initial review by Program staff (Application Review Staff) for completeness and to ensure the minimum threshold requirements are met. Incomplete applications may be returned to the Applicant with deficiencies noted. In addition, the Program reserves the right to accept or reject in part or in whole any complete application.

Applications that meet the minimum threshold requirements are scored by a panel of at least 3 AHFC staff members (Scoring Staff) knowledgeable in the development process. The Application Review Staff are not involved in scoring applications. The scoring panel uses the GO Bond Scoring Criteria developed for the Program. (**Attachment 2**). Applications must meet a minimum score in order to be considered further. **However, submission of an application that meets or exceeds the minimum score is not a guarantee that the proposed project will be funded.**

Applications that are likely to be recommended for funding will receive further consideration by a cross-departmental Project Review Team composed of NHCD and AHFC staff. The Project Review Team will discuss programmatic, regulatory, and administrative aspects of a proposed project before a final recommendation is made.

The Program may take up to 60 days from the date a complete application is accepted to determine whether the project may be recommended for funding or denied. Although not all inclusive, the Program may not provide any obligation or commitment for funding to any proposed project unless the project meets the following minimum consideration criteria and those stated in other sections of these guidelines:

1. All other required project financing must be in place or have evidence of funding obligation and/or commitment;
2. All requested documentation and/or information by the Program has been provided;
3. If required, all applicable environmental review and assessment has been performed.

Projects that are recommended for funding by AHFC Staff will be presented to the Housing Bond Review Committee.

B. Housing Bond Review Committee (HBRC)

The HBRC is the body appointed to review and recommend GO Bond-funded proposals. Projects recommended for funding by the HBRC will be presented to the AHFC Board for consideration. Approval/rejection is included in all staff recommendations to AHFC Board of Directors; however, the HBRC's role is advisory only. The City of Austin is not bound by the HBRC's recommendations. The City, in its sole discretion, may accept, in part or whole, or reject, in part or whole, any recommendation of the Committee.

The Program shall set forth Housing Bond Review Committee Process & Procedures.

1. HBRC Membership

The Committee shall consist of 5 members: 2 members shall be representatives from the Community Development Commission (CDC). The Chair of the CDC Housing Subcommittee and one at large appointment from the CDC shall comprise the CDC Membership; 3 community members shall be representatives from the real estate, finance and development community. All Committee Members must reside within the City limits of Austin, Texas. The City Manager or a designee thereof shall appoint the 3 community members. A quorum shall consist of 3 members.

2. Conflicts of Interest

The City of Austin Conflict of Interest Rules, and all other applicable state and federal laws, shall apply. In addition, due to conflicts of interest, persons appointed to the Committee may not be the recipient or actively pursuing City housing funds. People who are indirectly involved in development of affordable housing in Austin may serve but must recuse themselves from acting on applications where they have direct influence/benefit.

3. Term

The term of membership service for community members shall be until resignation. The term of membership for CDC members shall coincide with their service on the CDC.

4. Removal

A Housing Review Committee Member may be removed by the NHCD Community Development Officer for more than two unexcused absences annually.

5. Meetings

Meetings shall be held quarterly, based on funding availability and applications prepared for review. The Committee may call special meetings.

6. Role

- a. Provide expertise in affordable housing finance, development and construction as represented by community membership and City benefit as accorded by representation from the CDC.
- b. Make recommendation regarding approval for applications.
- c. Action is based on majority vote.
- d. Committee may reject applications, request additional information, or suggest alternative financial structures.
- e. Committee must use the award criteria outlined in the Project Evaluation Criteria.

XIII. PAYMENTS

Payments for eligible project costs are made according to the conditions described in the AHFC Loan Agreement and not more often than once monthly, unless otherwise authorized by AHFC. Eligible project costs must be documented with each request for payment for the purpose of supporting the amount requested. AHFC will verify the work completed and determine the amount of funds to be paid. AHFC will disburse the funds reasonably in proportion to the progress of the project with the right of retaining a portion of such funds pending final completion of the project, in accord with the Loan Agreement. AHFC will disburse a final payment of any retained amounts per the conditions described in the Loan Agreement.

The Program retains the right to withhold or temporarily suspend payments to any project that:

- has failed to perform according to the terms and conditions of the Loan Agreement,
- is behind in submitting required, timely or incomplete reports, documents or information required or requested by the Program, or
- has not resolved any outstanding monitoring findings or concerns identified by the Program within the timeframes identified.

At such time that AHFC has determined the project has adequately addressed any performance-related issues, the Program will disburse any pending payments.

XIV. REPORTING/RECORD KEEPING

A. Builders/Developers

With respect to a given project, developers/owners must maintain full and accurate books of account and other records reflecting the results of the development of the property and shall furnish, or cause to be furnished, to AHFC:

1. immediate notice of any material adverse change in the property's financial condition or business prospects or any lapse of coverage with respect to the Insurance Requirement,
2. all reports required by the AHFC Loan Agreement and the Statement of Work, and
3. upon request of monitors, and at developer's expense, such other operating, financial, insurance coverage and credit information as may reasonably be requested with respect to the property.

B. AHFC Reports

The current status of GO Bond-funded projects will be reported on AHFC's web site at <http://www.ci.austin.tx.us/ahfc/gobonds.htm>. The status report will include the Project Name, Builder/Developer Name, Project Address, Zip Code, Number of Affordable Units, GO Bond Funding Amount, Project Description, date presented to HBRC, and Status. The status report will be updated monthly.

The status of appeals regarding recommendations or decisions made by AHFC will be updated monthly on the AHFC website.

AHFC will provide a quarterly report of appeals to the GO Bond Housing Review Committee and to the Community Development Commission.

XV. LONG TERM COMPLIANCE (ON-GOING MONITORING)

Long-term compliance requirements for homeownership include, but may not be limited to:

- Owner-occupancy of the assisted unit; and
- Income determinations for homebuyers prior to resale (for those homes subject to the “resale” provisions);

Other long-term requirements that may apply to homeownership are addressed in NHCD’s On-going Monitoring Program Guidelines.

XVI. ADDITIONAL REQUIREMENTS

A. S.M.A.R.T. Housing™

All new construction projects will be required to obtain S.M.A.R.T. Housing certification prior to loan application. S.M.A.R.T. Housing is not applicable to rehabilitation projects.

B. City of Austin Visitability Ordinance

All single-family, duplex and triplex dwellings newly constructed with financial assistance provided through the Austin Housing Finance Corporation must be visitable in accordance with the City of Austin Visitability Ordinance No. 981007-A.

C. Section 3 Compliance

Projects involving construction that receive over \$200,000 G. O. Bond funds and/or projects involving construction with any contractor or subcontractor receiving over \$100,000 are required to provide employment opportunities for businesses and lower income persons described in 24 CFR §135, including requiring each of its subcontractors carrying out work in connection with the Project to comply with, in particular, the assurances set forth at 24 CFR §135.38:

1. The work under the Loan Agreement must be performed in the same manner as a project required to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing;
2. The Borrower will comply with HUD's regulations at 24 CFR §135, which implement Section 3. As evidenced by their execution of the Loan Agreement, the parties to the Loan Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the 24 CFR §135 regulations;
3. The Borrower will send to each labor organization or representative of workers with which the Borrower has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Borrower's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin;
4. The Borrower will include this Section 3 clause in every subcontract with respect to the Project, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is not complying in the manner established under 24 CFR §135. The Borrower will not subcontract with any subcontractor where the Borrower has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR §135;

5. The Borrower will certify that any vacant employment positions, including training positions, that are filled (1) after the Borrower is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR §135 require employment opportunities to be directed, were not filled to circumvent the Borrower's obligations under the Loan Agreement;
6. Noncompliance with Borrower's obligations may result in sanctions, termination of the Loan Agreement for default, and may include debarment or suspension from future HUD assisted contracts; and
7. With respect to Project the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under the Loan Agreement. This requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to the Loan Agreement that are subject to the requirements of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

D. Environmental Review

AHFC may require the owner of a project to provide a Phase I Environmental Review prior to executing loan documents to ensure that no environmental hazards exist on or near the project site. For properties built prior to 1979, the project must include an inspection for asbestos prepared by a firm certified by the State of Texas.

E. Lead-Based Paint

If a rehab project has the potential for lead-based paint hazards, the Applicant must ensure that the required procedures for testing of surfaces, completion of the rehab work, further testing and clearance examinations on the property are followed throughout the project, and that all personnel conducting those activities have obtained the appropriate state certifications to authorize their work. For any project involving non-exempt activities, the Applicant must work closely with AHFC to design a detailed plan to abate the hazard.

F. Contractor Selection

Owners/developers shall provide to the AHFC/City construction specifications and costs estimates for work proposed. To ensure completeness, cost efficiency and market competitiveness, the AHFC/City will review the project specifications and associated costs which will be mutually agreed to by both parties. Owners/developers will select construction contractors most capable to complete the project in accordance with the approved specifications and costs. The AHFC/City will conduct on-site inspections throughout the construction of the project to assure the project is completed as required.

G. Debarment and Suspension

Owners and contractors are prohibited from employing, awarding contracts, or funding any contractors or subcontractors that have been debarred, suspended, proposed for debarment, or placed on an ineligibility status by the federal government or the City of Austin. In addition, any owners who are debarred, suspended, proposed for debarment, or placed on an ineligibility status by the federal government or City of Austin will be prohibited from participating in the Program. Developers are required to screen the status of all contractors and subcontractors by consulting the website at http://epls.arnet.gov/cpl/owa/epls.search_menu.

H. Fair Housing Opportunity

The Borrower must comply with:

1. The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR part 100; Executive Order 11063, as amended, (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (non-discrimination in Federally Assisted programs) and implementing regulations issued at 24 CFR Part 1;
2. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146.
3. The prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8; and
4. The requirements of Executive Order 11246 (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60;

I. Insurance Requirements

Project developers/owners from the date until completion of all construction work on contracted housing units and until the expiration of the Loan Agreement with the AHFC, with respect to the Property, shall obtain, maintain and keep in full force and effect insurance coverages in regard to general liability, auto, and property hazard insurance in such amounts and in such manner as required by the AHFC's Loan Agreement. Program funds may not be used in connection with the rehabilitation of a property located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless flood insurance is obtained and maintained throughout the term of the loan.

J. Audit Requirements for Non-Profit Borrowers

Non-profit developers/owners must submit to the AHFC a complete set of audited financial statements not older than eighteen (18) months at the time of application, and the auditor's opinion and management letters in accordance with 24 CFR 84.21, and the Single Audit Act of 1984 (P.L. 98-502), as amended, covering each fiscal year until the termination of this Loan Agreement. Developer must use the procedures outlined in the Loan Agreement in securing the audit.

K. Non-Discrimination

The City of Austin/AHFC is committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modifications and equal access to communications will be provided upon request. Please call 974-3100 (voice) or 974-3102 (TDD) for assistance. For a sign language interpreter, please call 974-3100 at least 4-5 days in advance. The City of Austin/AHFC does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs and activities. Dolores Gonzalez is the City's ADA/Section 504 Coordinator. Her office is located at 505 Barton Springs Road, Suite 600. If you have any questions or complaints regarding your ADA/Section 504 rights, please call the ADA/Section 504 Coordinator at 974-3256 (voice) or 974-2445 (TTY). This publication is available in alternative formats. Please call 974-3100 (voice) or 974-3102 (TDD) for assistance.

L. Fair Housing In Marketing

Project developers/owners will be required to use affirmative fair housing marketing practices in soliciting prospective homebuyers in determining eligibility and concluding all transactions. Each participating entity must affirmatively further fair housing in the same manner as a project that is required to comply with 24 CFR 92.351. These requirements include:

1. The City/AHFC will require the project owner/developer to solicit applications from prospective buyers in the housing market who are least likely to apply for the rehabilitated housing without benefit of special outreach effort.
2. The project owner must maintain a file containing all marketing efforts (i.e. copies of newspaper ads, memos of phone calls, copies of letter, etc.) to be available for inspection at least annually by AHFC.
3. Where an owner fails to follow the affirmative marketing requirements, corrective actions shall include extensive outreach efforts to appropriate contacts to achieve the occupancy goals or other sanctions AHFC deems necessary.

M. Accessible and Adaptable Units

All projects receiving assistance must comply with visitability design standards established by the City's S.M.A.R.T. Housing™ Initiative.

XVII. DEFAULT ACTIONS AND SANCTIONS

A. Events of Default.

The AHFC/City retains the right to determine, in its sole discretion, whether a default has taken place in a G.O. Bond-funded project. The AHFC may exercise default actions if the AHFC determines that the default or violation(s) of the terms and conditions of the executed agreement has or may take place by the developer of the developer project. A default or violation may be facilitated as a result of action or inaction taken by the project developer, organization, agency,

contractor, individual or duly appointed representative of the developer or developer project. A default or violation may include, but not be limited to the following:

1. Developer or developer project fails to adequately address applicable local, state or federal rules and/or regulations governing the acquisition, construction and/or initial occupancy requirements of the project, or
2. Any breach of any covenant, agreement, provision or warranty made by the developer, or
3. If Program funds are used for any purpose other than authorized in the Loan Agreement, or
4. There is a change in use of property prior to repayment of Program assistance without AHFC review and written approval, or
5. Developer fails to respond to AHFC, City of Austin, or IRS requests for occupant, home sales, and project information during the life of the loan, or
6. Property is not maintained in compliance with City of Austin codes and ordinances and/or according to minimum federal HQS, or
7. Developer fails to meet any conditions of the Loan Agreement, or
8. Developer fails to comply with information submitted to the Program through the project selection process, or
9. Developer or developer project violates local state or federal law, or
10. Developer or developer project fails to maintain adequate documentation in support of project requirements, or
11. Developer fails to comply with any of the GO Bond Covenants.

B. Default Actions

Default actions that the AHFC may take should a default or project violations occur may include, but not be limited to any one or any combination of the following:

1. Call the project note due and payable in accordance with the terms and conditions of the note;
2. Call the note due and payable for the full amount of the Program funds provided to the project;
3. Temporarily suspend the project until corrective action is taken;
4. Terminate the agreement and associated documents with the project;
5. Request a review or investigation by local or federal authorities if applicable;
6. Debar the project organization or individual from consideration of any future funding opportunities from the AHFC.

Should the AHFC exercise any of the above referenced actions, the AHFC will provide the developer or developer project written notice of the default or violations determined and may provide a minimum of 48 hours, depending on the severity of the violation, to obtain a written response prior to proceeding with default actions. The AHFC retains the exclusive right to make final determination regarding the extent and timeline for the developer or developer project to initiate corrective action. The AHFC shall make the final determination as to whether the proposed corrective action taken by the developer or developer project is sufficient to meet applicable project terms, conditions, rules, processes, procedures and/or laws.

XVIII. APPEALS/GRIEVANCE PROCESS

Persons aggrieved by any action or inactions of the program which occurs in the implementation of these guidelines, and who wish to appeal said action or inaction, must do so by submitting an appeal in writing to the AHFC Real Estate Development Manager within 30 days of the action or inaction deemed aggrieving by said person(s).

The AHFC Real Estate Development Manager is charged with the administration for reviewing an appeal or grievance. The Real Estate Development Manager shall submit to the AHFC Treasurer a written summary of each grievance received along with explanations of the administrative action taken or recommended, within 15 days of his/her receipt of a written grievance. The AHFC Treasurer shall constitute the highest administrative personnel in the process.

ATTACHMENTS

1. Current MFI Chart
2. Opportunity Map of Austin



City of Austin, Neighborhood Housing and Community Development Office
P.O. Box 1088, Austin, Texas 78767
(512) 974-3100 ♦ Fax (512) 974-3161 ♦ www.cityofaustin.org/housing

*FY 2012 Area Median Family Income
For Travis County, Texas
\$75,900 (4-person household)
MSA: Austin, Round Rock, San Marcos, TX*

2012 HOME Program Income Limits by Household Size

Effective Date: February 9, 2012

Median Income Limit	1 Person Household	2 Person Household	3 Person Household	4 Person Household	5 Person Household	6 Person Household	7 Person Household	8 Person Household
20%	\$10,650	\$12,150	\$13,650	\$15,200	\$16,400	\$17,600	\$18,850	\$20,050
* 30%	\$15,950	\$18,200	\$20,500	\$22,750	\$24,600	\$26,400	\$28,250	\$30,050
<i>(30% MFI is defined by HUD as extremely low-income)</i>								
40%	\$21,250	\$24,300	\$27,300	\$30,350	\$32,800	\$35,200	\$37,650	\$40,075
* 50%	\$26,600	\$30,400	\$34,200	\$37,950	\$41,000	\$44,050	\$47,100	\$50,100
<i>(50% MFI is defined by HUD as very low income)</i>								
* 60%	\$31,920	\$36,480	\$41,040	\$45,540	\$49,200	\$52,860	\$26,520	\$60,120
70%	\$37,200	\$42,500	\$47,800	\$53,150	\$57,400	\$61,650	\$65,900	\$70,150
* 80%	\$42,500	\$48,600	\$54,650	\$60,700	\$66,600	\$70,450	\$75,300	\$80,150
<i>(80% MFI is defined by HUD as low-income)</i>								
100%	\$53,150	\$60,700	\$68,300	\$75,900	\$82,000	\$88,050	\$94,100	\$100,200
120%	\$63,750	\$72,850	\$82,000	\$91,100	\$98,350	\$105,650	\$112,950	\$120,250
140%	\$74,400	\$85,000	\$95,650	\$106,250	\$114,750	\$123,250	\$131,750	\$140,250

* Income limits provided by HUD: <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/2012/index.cfm>.

- ❖ Other income limits have been calculated by NHCD based on the formula used by HUD
- ❖ HUD rounds to the nearest \$50 dollars
- ❖ MFI Chart was expanded to include other percentages used by NHCD

KIRWAN
INSTITUTE

ATTACHMENT 2

